

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 95-29

March 31, 1995

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: William G. Stack, Associate General Counsel

SUBJECT: Oral Formal Settlements and Other Litigation Matters

The U.S. Court of Appeals for the Sixth Circuit recently issued a decision in NLRB v. Centra, Inc., et al. (Case No. 91-5236), wherein the court held that the respondents could not be held in civil contempt for the failure to comply with an informal settlement agreement to pay \$5.53 million in backpay. (Copy attached). The Region had secured an informal settlement agreement of a portion of the case through the parties' statement on the record before the administrative law judge that the respondents would pay \$5.53 million. Subsequently, although the settlement was never incorporated in a Board or court order, the Board instituted a contempt proceeding when the respondents failed to make the payments. In seeking a contempt finding, the Board sought to enforce a judgment by the court in the underlying unfair labor practice case, which required the respondents to offer reinstatement to certain employees and to make them whole for any loss of earnings and benefits. The Board argued that the informal settlement "liquidated" the court enforced order so as to make it enforceable by civil contempt. In the contempt proceeding, however, the court noted, that the court enforced order did not specify the amount of money necessary to make the employees whole. The court further found that an "informal settlement agreement that has not been incorporated into an order of the Board and enforced by the court cannot form the basis of an adjudication in civil contempt of a judgment of the court."

When a Region secures a settlement involving large sums of money, or installment payments, it is preferable that a written formal settlement agreement be obtained in order to facilitate collection. See Casehandling

Manual Section 10603. There may be situations, however, where it is impractical to secure such a written document. In these circumstances, the Region should obtain a stipulation on the record before the administrative law judge. The stipulation must include, at a minimum, the parties' agreement to waive their right to a hearing, administrative law judge's decision, the filing of exceptions and briefs, oral argument before the Board, the making of findings of fact and conclusions of law by the Board, and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations; the complete terms of the settlement; the parties' agreement that the Board may issue an order requiring respondent to take action appropriate to the terms of the settlement; and respondent's consent to the Board's application for the entry of a judgment by an appropriate circuit court of appeals enforcing the Board's order. Securing such a stipulation will ensure that the Agency is in a position to compel compliance with the settlement.

Informal Settlements Approved by ALJs

In the near future, Regions will be receiving a template for a revised informal Settlement Agreement Approved by an Administrative Law Judge, which will incorporate the reservation language discussed in Memorandum OM 94-104. Regions should use this template in the future and discontinue using their supply of these paper forms. In addition, Regions should ensure that each trial attorney has at least one copy of this revised form.

Scheduling of Trials

There have been several instances recently where Regions have scheduled a number of short trials to begin on the same day or within two consecutive days in the same or nearby cities. Unless these cases settle, this trial schedule requires the Division of Judges to assign an excessive number of judges to handle these cases. Spacing the trials, when practicable, to enable one judge to handle more than one case would assist the Agency in saving resources.

Similarly, when cases settle prior to trial, Regions should attempt to reschedule the remaining trials set to be heard during that week so as to enable one judge to handle the remaining cases without a lengthy hiatus. This would occur, for example, when the remaining cases are a one day Monday trial and a Thursday trial in the same or nearby city.

Case Estimates

Care should be taken to ensure that the case estimates that the Regions submit to the Division of Judges are accurate. Estimating the duration of a case is obviously problematical. To the maximum extent possible, however, Regions should strive for accurate estimates inasmuch as these estimates are relied upon when making the judges' assignments and also affect the decision whether to initiate a settlement judge conference. If the Regions later determine that their initial estimates were erroneous, the Division of Judges should be so notified. To assist in refining the estimates, the trial attorneys should discuss this matter with respondents' attorneys during their initial pretrial conversations and the Division of Judges should be informed of any revised estimates.

One apparent problem is that estimates are not updated when there are amendments or consolidations. It is important for Regions to revise the estimates, if warranted, in these circumstances.

Notification of Trial Cancellation

As soon as possible, Regions should notify the front office of the Division of Judges that a case is being taken off the trial calendar. In the past, such notification frequently has been given informally to a Chief or other ALJ. In the interest of uniformity and certainty, a system has been instituted whereby cases are not officially removed from the docket until a call is made from the Regions to one of the clericals in the Division of Judges' front office.

Weekend Emergencies

In the past there have been occasions when Regions have needed to contact the Division of Judges, and vice versa, over the weekend. To facilitate such contacts, set forth below are the relevant home telephone numbers. Please furnish the appropriate ALJ office with home numbers of the Regional Director and Regional Attorney.

D.C.

Judge Davidson	(301) 652-5655
Judge Giannasi	(301) 229-0136
Judge Ries	(202) 363-5851

Atlanta

Judge Cates	(404) 939-2753
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New York

Judge Bennett	(212) 672-1613
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San Francisco

Judge Robbins	(415) 387-5596
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Forwarding Pleadings

The Division of Judges occasionally discovers that its case files do not contain all of the pleadings which have issued. Please ensure that all formal documents are timely transmitted.

Preparation of Backpay Figures

On occasion, the Regions have not computed, in preparation for settlement conference calls, the amount of backpay owed the alleged discriminatees. This lack of backpay information makes serious settlement discussions impossible. Accordingly, please ensure that the backpay figures are computed prior to any settlement conferences.

Any questions concerning this memorandum should be addressed to your Assistant General Counsel, or to me.

W. G. S.

Attachment

cc: NLRBU